

Senate Engrossed House Bill

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 189

**HOUSE BILL 2250**

AN ACT

AMENDING SECTIONS 33-801 AND 33-803, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 6.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-803.01; AMENDING SECTIONS 33-807, 33-808, 33-809, 33-810, 33-811, 33-812 AND 33-813, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-801, Arizona Revised Statutes, is amended to read:

33-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or the person's successor in interest.

2. "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY OR A LEGAL HOLIDAY.

~~2.~~ 3. "Cash" means United States currency.

~~3.~~ 4. "Contract" means a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty, including but not limited to a note, A promissory note or provisions of any trust deed.

~~4.~~ 5. "Credit bid" means a bid made by the beneficiary in full or partial satisfaction of the contract or contracts which are secured by the trust deed. Such credit bid may only include an amount up to the full amount of the contract or contracts secured by the trust deed, less any amount owing on liens or encumbrances with interest which are superior in priority to the trust deed and which the beneficiary is obligated to pay under the contract or contracts or under the trust deed, together with the amount of other obligations provided in or secured by the trust deed and the costs and expenses of exercising the power of sale and the sale, including the trustee's fees and reasonable attorney fees actually incurred.

6. "FORCE MAJEURE" MEANS AN ACT OF GOD OR OF NATURE, A SUPERIOR OR OVERPOWERING FORCE OR AN EVENT OR EFFECT THAT CANNOT REASONABLY BE ANTICIPATED OR CONTROLLED AND THAT PREVENTS ACCESS TO THE SALE LOCATION FOR CONDUCT OF A SALE.

~~5.~~ 7. "Parent corporation" means a corporation which owns eighty per cent or more of every class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty per cent or more of its issued and outstanding guaranty capital.

~~6.~~ 8. "Trust deed" or "deed of trust" means a deed executed in conformity with this chapter and conveying trust property to a trustee or trustees qualified under section 33-803 to secure the performance of a contract or contracts, other than a trust deed which encumbers in whole or in part trust property located in Arizona and in one or more other states.

~~7.~~ 9. "Trust property" means any legal, equitable, leasehold or other interest in real property which is capable of being transferred, whether or not it is subject to any prior mortgages, trust deeds, contracts for conveyance of real property or other liens or encumbrances.

~~8.~~ 10. "Trustee" means an individual, association or corporation qualified pursuant to section 33-803, or the successor in interest thereto, to whom trust property is conveyed by trust deed. The trustee's obligations

1 to the trustor, beneficiary and other persons are as specified in this  
2 chapter, together with any other obligations specified in the trust deed.

3 9- 11. "Trustor" means the person conveying trust property by a trust  
4 deed as security for the performance of a contract or contracts, or the  
5 successor in interest of such person.

6 Sec. 2. Section 33-803, Arizona Revised Statutes, is amended to read:

7 33-803. Trustee of trust deed; qualifications

8 A. Except as provided in subsection B, the trustee of a trust deed  
9 shall be:

10 1. An association or corporation doing business under the laws of this  
11 state as a bank, trust company, savings and loan association, credit union,  
12 insurance company, escrow agent or consumer lender.

13 2. A person who is a member of the state bar of Arizona.

14 3. A person who is a licensed real estate broker under the laws of  
15 this state.

16 4. A person who is a licensed insurance producer under the laws of  
17 this state.

18 5. An association or corporation which THAT is licensed, chartered or  
19 regulated by the federal deposit insurance corporation, the comptroller of  
20 the currency, the federal home loan bank, the national credit union  
21 administration, the farm credit administration, THE FEDERAL RESERVE BOARD or  
22 any successors.

23 6. The parent corporation of any association or corporation referred  
24 to in this subsection or any corporation all the stock of which is owned by  
25 or held solely for the benefit of any such association or corporation  
26 referred to in this subsection.

27 B. An individual trustee of a trust deed who qualifies under the  
28 provisions of subsection A shall not be the beneficiary of the trust, but  
29 such restriction shall not preclude a corporate or association trustee which  
30 THAT qualifies under the provisions of subsection A and while acting in good  
31 faith from being the beneficiary, or after appointment from acquiring the  
32 interest of the beneficiary by succession, conveyance, grant, descent or  
33 devise.

34 C. A TRUSTEE OF A TRUST DEED WHO QUALIFIES UNDER SUBSECTION A SHALL  
35 NOT LEND OR DELEGATE THE TRUSTEE'S NAME OR CORPORATE CAPACITY TO ANY  
36 INDIVIDUAL OR ENTITY THAT DOES NOT QUALIFY AS A TRUSTEE OF A TRUST DEED. AN  
37 INDIVIDUAL, COMPANY, ASSOCIATION OR CORPORATION SHALL NOT CIRCUMVENT THE  
38 REQUIREMENTS OF SUBSECTION A BY ACTING IN CONCERT WITH A NONQUALIFYING  
39 TRUSTEE.

40 Sec. 3. Title 33, chapter 6.1, article 1, Arizona Revised Statutes,  
41 is amended by adding section 33-803.01, to read:

42 33-803.01. Trustee of trust deed; delegation of duties

43 A. A TRUSTEE SHALL NOT DELEGATE THE FOLLOWING DUTIES:

44 1. THE PREPARATION AND EXECUTION OF ANY OF THE FOLLOWING:

45 (a) THE NOTICE OF TRUSTEE SALE.

1 (b) THE CANCELLATION OF NOTICE OF SALE.

2 (c) THE TRUSTEE'S DEED UPON SALE.

3 2. THE RECEIPT AND RESPONSE TO REQUESTS FOR REINSTATEMENT OR PAYOFF  
4 AMOUNTS.

5 B. THIS SECTION DOES NOT PROHIBIT THE TRUSTEE FROM USING CLERICAL OR  
6 OFFICE STAFF EMPLOYED BY THE TRUSTEE AND UNDER THE TRUSTEE'S DIRECT AND  
7 IMMEDIATE SUPERVISION TO ASSIST IN THE DUTIES PRESCRIBED BY SUBSECTION A.

8 Sec. 4. Section 33-807, Arizona Revised Statutes, is amended to read:

9 33-807. Sale of trust property; power of trustee; foreclosure  
10 of trust deed

11 A. By virtue of his position, a power of sale is conferred upon the  
12 trustee of a trust deed under which the trust property may be sold, in the  
13 manner provided in this chapter, after a breach or default in performance of  
14 the contract or contracts, for which the trust property is conveyed as  
15 security, or a breach or default of the trust deed. At the option of the  
16 beneficiary, a trust deed may be foreclosed in the manner provided by law for  
17 the foreclosure of mortgages on real property in which event the provisions  
18 of chapter 6 of this title govern GOVERNS the proceedings. The beneficiary  
19 or trustee shall constitute the proper and complete party plaintiff in any  
20 action to foreclose a deed of trust. The power of sale may be exercised by  
21 the trustee without express provision therefor in the trust deed.

22 B. The trustee or beneficiary may file and maintain an action to  
23 foreclose a deed of trust at any time before the trust property has been sold  
24 under the power of sale. A sale of trust property under the power of sale  
25 shall not be held after an action to foreclose the deed of trust has been  
26 filed unless the foreclosure action has been dismissed.

27 C. The trustee or beneficiary may file an action for the appointment  
28 of a receiver according to sections 12-1241 and 33-702. The right to  
29 appointment of a receiver shall be independent of and may precede the  
30 exercise of any other right or remedy.

31 D. The power of sale of trust property conferred upon the trustee  
32 shall not be exercised before the ~~expiration of ninety days from~~ NINETY-FIRST  
33 DAY AFTER the DATE OF THE recording of the notice of the sale. THE SALE  
34 SHALL NOT BE SET FOR A SATURDAY OR LEGAL HOLIDAY. THE TRUSTEE MAY SCHEDULE  
35 MORE THAN ONE SALE FOR THE SAME DATE, TIME AND PLACE.

36 E. The trustee need only be joined as a party in legal actions  
37 pertaining to a breach of the trustee's obligation under this chapter or  
38 under the deed of trust. Any order of the court entered against the  
39 beneficiary is binding upon the trustee with respect to any actions which  
40 THAT the trustee is authorized to take by the trust deed or by this  
41 chapter. If the trustee is joined as a party in any other action, the  
42 trustee is entitled to be immediately dismissed and to recover costs and  
43 reasonable attorney fees from the person joining the trustee.

1       Sec. 5. Section 33-808, Arizona Revised Statutes, is amended to read:  
2       33-808. Notice of trustee's sale

3       A. The trustee shall give written notice of the time and place of sale  
4       legally describing the trust property to be sold by each of the following  
5       methods:

6       1. Recording a notice in the office of the recorder of each county  
7       where the trust property is situated.

8       2. Giving notice as provided in section 33-809 to the extent  
9       applicable.

10       3. Posting a COPY OF THE notice OF SALE, at least twenty days before  
11       the date of sale in some conspicuous place on the trust property to be sold,  
12       if posting can be accomplished without a breach of the peace. If access to  
13       the trust property is denied because a common entrance to the property is  
14       restricted by a limited access gate or similar impediment, the property shall  
15       be posted by posting notice at that gate or impediment. Notice shall also  
16       be posted at one of the places provided for posting public notices at any  
17       building that serves as a location of the superior court in the county where  
18       the trust property is to be sold. Posting is deemed completed on the date  
19       the first notice TRUST PROPERTY is posted. THE POSTING OF NOTICE AT THE  
20       SUPERIOR COURT LOCATION IS DEEMED A MINISTERIAL ACT.

21       4. Publication of THE NOTICE OF sale notice in a newspaper of general  
22       circulation in each county in which THE trust property to be sold is  
23       situated. THE NOTICE OF sale notice shall be published at least once a week  
24       for four consecutive weeks. The last date of publication shall not be less  
25       than ten days prior to the date of sale. Publication is deemed completed on  
26       the date of the first publication of THE FOUR PUBLICATIONS OF THE notice OF  
27       SALE pursuant to this paragraph.

28       B. The sale shall be held at the time and place designated in the  
29       notice of sale on a day other than a Saturday or legal holiday between 9:00  
30       a.m. and 5:00 p.m. MOUNTAIN STANDARD TIME at a specified place on the trust  
31       property, at a specified place at any building that serves as a location of  
32       the superior court or at a specified place at a place of business of the  
33       trustee, in any county in which part of the trust property to be sold is  
34       situated.

35       C. The notice of sale shall contain:

36       1. The date, time and place of the sale. THE DATE, TIME AND PLACE  
37       SHALL BE SET PURSUANT TO SECTION 33-807, SUBSECTION D. ~~This~~ THE date shall  
38       be ~~at least ninety days~~ NO SOONER THAN THE NINETY-FIRST DAY after the date  
39       that the notice of sale was recorded.

40       2. The street address, if any, or identifiable location as well as  
41       the legal description of the trust property.

42       3. The county assessor's tax parcel number for the trust property or  
43       the tax parcel number of a larger parcel of which the trust property is a  
44       part.

1 4. The original principal balance as shown on the deed of trust. If  
2 the amount is not shown on the deed of trust, it shall be listed as  
3 "unspecified".

4 5. The names and addresses, as of the date the notice of sale is  
5 recorded, of the beneficiary and the trustee, the name and address of the  
6 original trustor as stated in the deed of trust, the signature of the trustee  
7 and the basis for the trustee's qualification pursuant to section 33-803,  
8 subsection A, INCLUDING AN EXPRESS STATEMENT OF THE PARAGRAPH UNDER  
9 SUBSECTION A ON WHICH THE QUALIFICATION IS BASED. The address of the  
10 beneficiary shall not be in care of the trustee or trustee's agent.

11 6. The telephone number of the trustee.

12 D. The notice of sale shall be sufficient if made in substantially the  
13 following form:

14 Notice of Trustee's Sale

15 The following legally described trust property will be  
16 sold, pursuant to the power of sale under that certain trust  
17 deed recorded in docket or book \_\_\_\_\_ at page  
18 \_\_\_\_\_ records of \_\_\_\_\_ county, Arizona, at public  
19 auction to the highest bidder at (specific place of sale as  
20 permitted by law) \_\_\_\_\_, in \_\_\_\_\_ county, in  
21 or near \_\_\_\_\_, Arizona, on \_\_\_\_\_, \_\_\_\_\_, at  
22 \_\_\_\_\_ o'clock \_\_\_\_\_ m. of said day:

23 (street address, if any, or identifiable

24 location of trust property)

25 (legal description of trust property)

26 Tax parcel number \_\_\_\_\_

27 Original principal balance \$ \_\_\_\_\_

28 Name and address of beneficiary \_\_\_\_\_

31 Name and address of original trustor \_\_\_\_\_

34 Name, and address AND TELEPHONE NUMBER of trustee \_\_\_\_\_

37 Signature of trustee \_\_\_\_\_

38 Manner of trustee qualification \_\_\_\_\_

39 NAME OF TRUSTEE'S REGULATOR \_\_\_\_\_

40 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

41 (Acknowledgement)

42 E. Any error or omission in the information required by subsection C  
43 or D of this section, other than an error in the legal description of the  
44 trust property or an error in the date, time or place of sale, shall not  
45 invalidate a trustee's sale. Any error in the legal description of the trust

property shall not invalidate a trustee's sale if considered as a whole the information provided is sufficient to identify the trust property being sold. IF THERE IS AN ERROR OR OMISSION IN THE LEGAL DESCRIPTION SO THAT THE TRUST PROPERTY CANNOT BE IDENTIFIED, OR IF THERE IS AN ERROR IN THE DATE, TIME OR PLACE OF SALE, THE TRUSTEE SHALL RECORD A CANCELLATION OF NOTICE OF SALE. The trustee or any person furnishing information to the trustee shall not be subject to liability for any error or omission in the information required by subsection C of this section except for the wilful and intentional failure to provide such information. This subsection does not apply to claims made by an insured under any policy of title insurance.

F. THE NOTICE OF TRUSTEE SALE MAY NOT BE RERECORDED FOR ANY REASON. THIS SUBSECTION DOES NOT PROHIBIT THE RECORDING OF A NEW OR SUBSEQUENT NOTICE OF SALE REGARDING THE SAME PROPERTY.

Sec. 6. Section 33-809, Arizona Revised Statutes, is amended to read:

33-809. Request for copies of notice of sale; mailing by trustee; disclosure of information regarding trustee sale

A. A person desiring a copy of a notice of sale under a trust deed, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, shall record in the office of the county recorder in any county in which part of the trust property is situated a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the county, docket or book and page of the recording data thereof and by stating the names of the original parties to such deed, the date the deed was recorded and the legal description of the entire trust property and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book \_\_\_\_\_ at page \_\_\_\_\_, records of \_\_\_\_\_ county, Arizona,

\_\_\_\_\_, \_\_\_\_\_,  
(legal description of trust property)

Executed by \_\_\_\_\_ as trustor, in which \_\_\_\_\_ is named as beneficiary and \_\_\_\_\_ as trustee, be mailed to \_\_\_\_\_ at \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Signature

(Acknowledgement)

B. Not later than thirty days after recording the notice of sale, the trustee or beneficiary shall mail by certified or registered mail, with postage prepaid, a copy of the NOTICE OF sale notice which THAT reflects the

1 recording date together with any notice required to be given by subsection  
2 C of this section, addressed as follows:

3 1. To each person whose name and address are set forth in a request  
4 for notice, which has been recorded prior to the recording of the notice of  
5 sale, directed to the address designated in such request.

6 2. To each person who, at the time of recording of the notice of sale,  
7 appears on the records of the county recorder in the county in which any part  
8 of the trust property is situated to have an interest in any of the trust  
9 property. The copy of the notice sent pursuant to this paragraph shall be  
10 addressed to the person whose interest appears of record at the address set  
11 forth in the document. If no address for the person is set forth in the  
12 document, the copy of the notice may be addressed in care of the person to  
13 whom the recorded document evidencing such interest was directed to be mailed  
14 at the time of its recording or to any other address of the person known or  
15 ascertained by the trustee. If the interest which THAT appears on the  
16 records of the county recorder is a deed of trust, a copy of the notice only  
17 needs to be mailed to the beneficiary under the deed of trust. If any person  
18 having an interest of record or the trustor, or any person who has recorded  
19 a request for notice, desires to change the address to which notice shall be  
20 mailed, the change shall be accomplished by a request as provided under this  
21 section.

22 C. The trustee ~~or beneficiary~~, within five business days after the  
23 recordation of a notice of sale, shall mail by certified or registered mail,  
24 with postage prepaid, a copy of any THE notice of sale to each of the persons  
25 who were parties to the trust deed except the trustee. The copy of the  
26 notice mailed to the parties need not show the recording date of the  
27 notice. The notice sent pursuant to this subsection shall be addressed to  
28 the mailing address specified in the trust deed. In addition, notice to each  
29 party shall contain a statement that a breach or nonperformance of the trust  
30 deed or the contract or contracts secured by the trust deed, or both, has  
31 occurred, and setting forth the nature of such breach or nonperformance and  
32 of the beneficiary's election to sell or cause to be sold the trust property  
33 under the trust deed and the additional notice shall be signed by the  
34 beneficiary or the beneficiary's agent. A copy of the additional notice  
35 shall also be sent with the notice provided for in subsection B, paragraph  
36 2 of this section to all persons whose interest in the trust property is  
37 subordinate in priority to that of the deed of trust along with a written  
38 statement that the interest may be subject to being terminated by the  
39 trustee's sale. The written statement may be contained in the statement of  
40 breach or nonperformance.

41 D. No request for a copy of a notice recorded pursuant to this  
42 section, nor any statement or allegation in any request, nor any record of  
43 request, shall affect the title to the trust property or be deemed notice to  
44 any person that a person requesting a copy of notice of sale has or claims  
45 any interest in, or claim upon, the trust property.



1 E. At any time that the trust deed is subject to reinstatement  
2 pursuant to section 33-813, but not sooner than thirty days after recordation  
3 of the notice of trustee's sale, the trustee shall upon receipt of a written  
4 request, provide, if actually known to the trustee, the following information  
5 relating to the trustee's sale and the trust property:

6 1. The unpaid principal balance of the note or other obligation which  
7 is secured by the deed of trust.

8 2. The name and address of record of the owner of the trust property  
9 as of the date of recordation of the notice of trustee's sale.

10 3. A list of the liens and encumbrances upon the trust property as of  
11 the date of recordation of the notice of trustee's sale, excluding those  
12 matters set forth in section 33-438, subsection A.

13 If the trustee elects to charge a fee for providing the information  
14 requested, the fee shall not exceed ~~one-twentieth~~ FIVE PER CENT of the amount  
15 the trustee may charge pursuant to section 33-813, subsection B, paragraph  
16 4, except that the trustee shall not CHARGE A FEE THAT IS MORE THAN ONE  
17 HUNDRED DOLLARS OR be required to accept a fee THAT IS less than twenty  
18 THIRTY dollars but may accept a lesser fee at the trustee's discretion. The  
19 trustee, or any other person furnishing information pursuant to this  
20 subsection to the trustee, shall not be subject to liability for any error  
21 or omission in providing the information requested, except for the wilful and  
22 intentional failure to provide information in the trustee's actual  
23 possession.

24 F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. MOUNTAIN  
25 STANDARD TIME on the last business day preceding the day of sale and  
26 beginning at 9:00 a.m. MOUNTAIN STANDARD TIME and continuing until the time  
27 of sale on the day of the sale, the trustee shall ~~provide to any person who~~  
28 ~~requests it~~ MAKE AVAILABLE the actual bid or A GOOD FAITH ESTIMATE OF THE  
29 credit bid the beneficiary is entitled to make at the sale. If the trustee  
30 ~~is unable to provide the credit bid~~ ACTUAL BID OR GOOD FAITH ESTIMATE IS NOT  
31 AVAILABLE during the prescribed time period, the trustee shall postpone the  
32 sale until the trustee is able to comply with this subsection.

33 G. In providing information pursuant to subsections E and F of this  
34 section, the trustee may, without obligation or liability for the accuracy  
35 or completeness of the information, MAY respond to oral requests, respond  
36 orally or in writing or provide additional information not required by such  
37 subsections. With respect to property which THAT is the subject of a  
38 trustee's sale, the beneficiary of such deed of trust or the holder of any  
39 prior lien may, but shall not be required to, provide information concerning  
40 such deed of trust or any prior lien which THAT is not required by subsection  
41 E or F of this section and may charge a reasonable fee for providing the  
42 information. The providing of such information by any beneficiary or holder  
43 of a prior lien shall be without obligation or liability for the accuracy or  
44 completeness of the information.

1       Sec. 7. Section 33-810, Arizona Revised Statutes, is amended to read:  
2       33-810. Sale by public auction; postponement of sale

3       A. On the date and at the time and place designated in the notice of  
4 sale, the trustee shall offer to sell the trust property at public auction  
5 for cash to the highest bidder. THE TRUSTEE MAY SCHEDULE MORE THAN ONE SALE  
6 FOR THE SAME DATE, TIME AND PLACE. The attorney or agent for the trustee may  
7 conduct the sale and act at such sale as the auctioneer for the trustee. Any  
8 person, including the trustee or beneficiary, may bid at the sale. Only the  
9 beneficiary may make a credit bid in lieu of cash at sale. The trustee shall  
10 require every bidder except the beneficiary to provide a one thousand dollar  
11 deposit in cash or in any other form that is satisfactory to the trustee as  
12 a condition of entering a bid. The trustee shall not refuse cash as a form  
13 of payment of the bidder's deposit. THE TRUSTEE OR AUCTIONEER MAY CONTROL  
14 THE MEANS AND MANNER OF THE AUCTION. Every bid shall be deemed an  
15 irrevocable offer until the sale is completed, except that a subsequent bid  
16 by the same bidder for a higher amount shall cancel that bidder's lower bid.  
17 To determine the highest price bid, the trustor or beneficiary present at the  
18 sale may recommend the manner in which the known lots, parcels or divisions  
19 of the trust property DESCRIBED IN THE NOTICE OF SALE be sold. The trustee  
20 shall conditionally sell the trust property under each recommendation, and,  
21 in addition, shall conditionally sell the trust property as a whole. The  
22 trustee shall determine which conditional sale or sales result in the highest  
23 total price bid for all of the trust property. The trustee shall return  
24 deposits to all but the bidder or bidders whose bid or bids result in the  
25 highest bid price. The sale shall be completed on payment by the purchaser  
26 of the price bid in a form satisfactory to the trustee. The subsequent  
27 execution, delivery and recordation of the trustee's deed as prescribed by  
28 section 33-811 are ministerial acts. If the trustee's deed is recorded in  
29 the county in which the trust property is located within fifteen business  
30 days after the date of the sale, the trustee's sale is deemed perfected at  
31 the appointed date and time of the trustee's sale.

32       B. ~~The person conducting the sale may, for any cause deemed in the~~  
33 ~~interest of the beneficiary or trustor, or both, postpone or continue the~~  
34 ~~sale from time to time or change the place of the sale to any other location~~  
35 ~~authorized pursuant to this chapter by giving notice of the new date, time~~  
36 ~~and place by public declaration at the time and place last appointed for the~~  
37 ~~sale. Any new sale date shall be a fixed date within ninety calendar days~~  
38 ~~of the date of the declaration. AFTER A SALE HAS BEEN POSTPONED OR~~  
39 ~~CONTINUED, THE TRUSTEE, ON REQUEST, SHALL MAKE AVAILABLE THE DATE AND TIME~~  
40 ~~OF THE NEXT SCHEDULED SALE AND, IF THE LOCATION OF THE SALE HAS BEEN CHANGED,~~  
41 ~~THE NEW LOCATION OF THE SALE UNTIL THE SALE HAS BEEN CONDUCTED OR CANCELLED~~  
42 ~~AND PROVIDING THIS INFORMATION SHALL BE WITHOUT OBLIGATION OR LIABILITY FOR~~  
43 ~~THE ACCURACY OR COMPLETENESS OF THE INFORMATION. No other notice of the~~  
44 ~~postponed, continued or relocated sale is required except as provided in~~  
45 ~~subsection C of this section.~~

1 C. A sale shall not be complete if the sale as held is contrary to or  
2 in violation of any federal statute in effect because of an unknown or  
3 undisclosed bankruptcy. A sale so held shall be deemed to be continued to  
4 a date, time and place announced by the trustee at the sale and shall comply  
5 with subsection B of this section or, if not announced, shall be continued  
6 to the same place and at the same time twenty-eight days later, unless the  
7 twenty-eighth day falls on a Saturday or legal holiday, in which event it  
8 shall be continued to the first business day thereafter. In the event a sale  
9 is continued because of an unknown or undisclosed bankruptcy, the trustee  
10 shall notify by registered or certified mail, with postage prepaid, all  
11 bidders who provide their names, addresses and telephone numbers in writing  
12 to the party conducting the sale of the continuation of the sale.

13 D. A SALE IS POSTPONED BY OPERATION OF LAW TO THE NEXT BUSINESS DAY  
14 AT THE SAME SCHEDULED TIME AND PLACE IF AN ACT OF FORCE MAJEURE PREVENTS  
15 ACCESS TO THE SALE LOCATION FOR THE CONDUCT OF THE SALE.

16 Sec. 8. Section 33-811, Arizona Revised Statutes, is amended to read:

17 33-811. Payment of bid; trustee's deed

18 A. The highest bidder at the sale, other than the beneficiary to the  
19 extent of the credit bid, shall pay the price bid by no later than 5:00 p.m.  
20 MOUNTAIN STANDARD TIME of the following day, other than a Saturday or legal  
21 holiday. If the highest bidder fails to pay the amount bid for the property  
22 struck off to the bidder at the sale, the trustee, in the trustee's sole  
23 discretion, shall either continue the sale to reopen bidding or immediately  
24 offer the trust property to the second highest bidder who may purchase the  
25 trust property at that bidder's bid price. The deposit of the highest bidder  
26 who fails to pay the amount bid shall be forfeited and shall be treated as  
27 additional sale proceeds to be applied in accordance with section 33-812,  
28 subsection A. If the second highest bidder does not pay that bidder's bid  
29 price by 5:00 p.m. MOUNTAIN STANDARD TIME of the next day excluding Saturdays  
30 and legal holidays after the property has been offered to that bidder by the  
31 trustee, the trustee shall either continue the sale to reopen bidding or  
32 offer the trust property to each of the prior bidders on successive days  
33 excluding Saturdays and legal holidays in order of their highest bid, until  
34 a bid price is paid, or if there is no other bidder, the sale shall be deemed  
35 to be continued to a time and place designated by the trustee, or if not  
36 designated, the sale shall be continued to the same place and at the same  
37 time twenty-eight days after the last scheduled sale date. If the  
38 twenty-eighth day is a Saturday or legal holiday, the sale shall be continued  
39 to the next business day. If the sale is continued, the trustee shall  
40 provide notice of the continuation of the sale by registered or certified  
41 mail, with postage prepaid, to all bidders who provide their names, addresses  
42 and telephone numbers in writing to the party conducting the sale. In  
43 addition to the forfeit of deposit, a highest bidder who fails to pay the  
44 amount bid by that bidder is liable to any person who suffers loss or  
45 expenses as a result, including attorney fees. In any subsequent sale of

1 trust property, the trustee may reject REFUSE TO ACCEPT any bid of that  
2 person. In any sale that is continued pursuant to this subsection, the  
3 trustee shall reject the bid from any previous bidder who elected not to pay  
4 that bidder's bid price.

5 B. The price bid shall be paid at the office of the trustee or the  
6 trustee's agent, or any other reasonable place designated by the  
7 trustee. The payment of the bid price may be made at a later time if agreed  
8 upon in writing by the trustee. The trustee shall execute and deliver the  
9 trustee's deed to the purchaser within seven business days after receipt of  
10 payment by the trustee or the trustee's agent made in a form that is  
11 satisfactory to the trustee. THE RECORDING OF THE TRUSTEE'S DEED UPON SALE  
12 MAY ALSO CONSTITUTE DELIVERY OF THE DEED TO THE PURCHASER. THE TRUSTEE IS  
13 NOT LIABLE FOR ANY DAMAGES RESULTING FROM THE FAILURE TO RECORD THE TRUSTEE'S  
14 DEED UPON SALE AFTER PHYSICAL DELIVERY OF THE DEED TO THE PURCHASER. The  
15 trustee's deed shall raise the presumption of compliance with the  
16 requirements of the deed of trust and this chapter relating to the exercise  
17 of the power of sale and the sale of the trust property, including recording,  
18 mailing, publishing and posting of notice of sale and the conduct of the  
19 sale. A trustee's deed shall constitute conclusive evidence of the meeting  
20 of those requirements in favor of purchasers or encumbrancers for value and  
21 without actual notice. Knowledge of the trustee shall not be imputed to the  
22 beneficiary.

23 C. The trustor, its successors or assigns, and all persons to whom the  
24 trustee mails a notice of a sale under a trust deed pursuant to section  
25 33-809 shall waive all defenses and objections to the sale not raised in an  
26 action that results in the issuance of a court order granting relief pursuant  
27 to rule 65, Arizona rules of civil procedure, entered before 5:00 p.m.  
28 MOUNTAIN STANDARD TIME on the last BUSINESS day other than Saturday, Sunday  
29 or other legal holiday before the scheduled date of the sale. A copy of the  
30 order, the application for the order and the complaint shall be delivered to  
31 the trustee within twenty-four hours after entering the order.

32 D. A sale is not complete if the sale violates subsection C of this  
33 section because of an undisclosed order entered by the court within the time  
34 provided for in subsection C of this section. A sale held in violation of  
35 subsection C of this section shall be continued to a date, time and place  
36 announced by the trustee at the sale and shall comply with section 33-810,  
37 subsection B. If not announced, the sale shall be continued to the same  
38 place and at the same time twenty-eight days later. If the twenty-eighth day  
39 falls on a Saturday, Sunday or other legal holiday, the sale shall be  
40 continued to the next business day. If the sale is continued because of an  
41 unknown or undisclosed order as provided in this subsection, the trustee  
42 shall notify by registered or certified mail, with postage prepaid, all  
43 bidders who provide names, addresses and telephone numbers in writing to the  
44 party conducting the sale of the continuation of the sale.

1 E. The trustee's deed shall operate to convey to the purchaser the  
2 title, interest and claim of the trustee, the trustor, the beneficiary, their  
3 respective successors in interest and all persons claiming the trust property  
4 sold by or through them, including all interest or claim in the trust  
5 property acquired subsequent to the recording of the deed of trust and prior  
6 to delivery of the trustee's deed. That conveyance shall be absolute without  
7 right of redemption and clear of all liens, claims or interests that have a  
8 priority subordinate to the deed of trust and shall be subject to all liens,  
9 claims or interests that have a priority senior to the deed of trust.

10 Sec. 9. Section 33-812, Arizona Revised Statutes, is amended to read:

11 33-812. Disposition of proceeds of sale

12 A. The trustee shall apply the proceeds of the trustee's sale in the  
13 following order of priority:

14 1. To the costs and expenses of exercising the power of sale and the  
15 sale, including the payment of the trustee's fees and reasonable attorney's  
16 ATTORNEY fees actually incurred.

17 2. To the payment of the contract or contracts secured by the trust  
18 deed.

19 3. To the payment of all other obligations provided in or secured by  
20 the trust deed and actually paid by the beneficiary before the trustee's  
21 sale.

22 4. To the junior lienholders or encumbrancers in order of their  
23 priority as they existed at the time of the sale. After payment in full to  
24 all junior lienholders and encumbrancers payment shall be made to the  
25 trustor, except that if the trustor has sold or transferred the property to  
26 another owner before the trustee's sale, payment shall be made to the person  
27 who is the owner of record at the time of the trustee's sale.

28 B. ~~The trustee may,~~ In the trustee's discretion, ~~AND~~ instead of any  
29 one or more of the applications specified in subsection A of this section,  
30 THE TRUSTEE MAY elect to deposit the balance of the proceeds with the county  
31 treasurer in the county in which the sale took place pending an order of the  
32 superior court in the county. On deposit of the balance of the monies and  
33 after complying with subsection C of this section, the trustee shall be  
34 discharged from all responsibility for acts performed in good faith according  
35 to this chapter. The county treasurer shall reject any deposit that does not  
36 comply with subsection C of this section.

37 C. If the trustee elects to deposit the balance of the sale proceeds  
38 as prescribed by subsection B of this section, the trustee as plaintiff shall  
39 commence a civil action in the superior court in the county in which the sale  
40 occurred. The action shall name the applicable county treasurer as the  
41 defendant, BUT THE COUNTY TREASURER HAS NO OBLIGATION TO RESPOND TO THE  
42 COMPLAINT OR APPEAR IN THE ACTION. The trustee shall mail by certified or  
43 registered mail, with postage prepaid, a conformed copy of the complaint that  
44 displays the filing stamp of the court clerk to THE COUNTY TREASURER AND all  
45 persons, other than the beneficiary, who are entitled to notice pursuant to

1 section 33-809 and to any other person known by the trustee to have an  
2 interest of record in the property at the time of the sale. The trustee  
3 shall incorporate in or attach to the complaint:

4 1. A copy of any one of the following:

5 (a) The trustee sale guarantee.

6 (b) The title search used by the trustee in connection with the  
7 trustee's sale of the subject property.

8 (c) A detailed description of the liens and encumbrances used by the  
9 trustee in connection with the trustee's sale of the property.

10 2. A copy of the list of the persons and each of the addresses to  
11 which the complaint will be mailed.

12 3. A detailed description of any disbursements made by the trustee  
13 pursuant to this section.

14 The trustee may withhold from the proceeds of the sale a reasonable trustee's  
15 fee, ~~AND reasonable attorney's fee~~ ATTORNEY FEES actually incurred and the  
16 costs of filing the complaint, depositing the proceeds and mailing the  
17 notices.

18 D. Upon filing the complaint, the trustee as plaintiff is discharged  
19 without prejudice from the proceedings.

20 E. Any person with a recorded or other legal interest in the property  
21 at the time of the sale may apply for the release of the proceeds by filing  
22 an application for distribution in the civil action that was filed by the  
23 trustee pursuant to subsection C of this section. The applicant shall mail  
24 postage prepaid by any form of mail that requires a signed and returned  
25 receipt a copy of the application to all persons at each of the addresses  
26 named on the list of persons that is incorporated in or attached to the  
27 complaint. On return of the signed receipt or the undelivered or unclaimed  
28 original envelope, the applicant shall file with the court an affidavit that  
29 states that the application was mailed to the person and that the application  
30 was either:

31 1. Received, as evidenced by the receipt. The applicant shall attach  
32 to the affidavit a copy of the receipt.

33 2. Not received, as evidenced by the original returned envelope. The  
34 applicant shall attach to the affidavit the original unopened and undelivered  
35 or unclaimed returned envelope.

36 F. Any person who receives the application or who claims a right to  
37 the proceeds may file a response to the application within thirty days of the  
38 mailing of the application. The person filing a response shall mail a copy  
39 of the response to each applicant. Within ten calendar days from the date  
40 the response is mailed, an applicant may file with the clerk and mail to each  
41 respondent a reply to the response. On expiration of the time for filing a  
42 reply, an applicant shall provide the court with postage prepaid business  
43 envelopes that are addressed to all persons who are entitled to receive  
44 copies of the complaint pursuant to subsection C of this section.

1           G. The court shall issue an order to the county treasurer to release  
2 the proceeds deposited with the county treasurer to the party entitled to  
3 receive them after applying the priorities prescribed by subsection A of this  
4 section. On notice to all persons who have received a copy of the complaint  
5 or who have filed a responsive pleading, the court may, and if there are  
6 competing claims to the proceeds, the court shall, hold a hearing to  
7 determine entitlement to the proceeds. If the court finds that a person  
8 other than an applicant or respondent has a superior right to receive the  
9 proceeds, the court shall not issue an order on the proceeds until one  
10 hundred eighty days from the date the complaint was filed. At any time  
11 before the expiration of the one hundred eighty day period, an applicant or  
12 respondent may move for a hearing to determine whether the claimed superior  
13 right is valid or enforceable and whether the claim is entitled to receive  
14 priority over the claim of the applicant or respondent. The motion shall set  
15 forth the specific facts and evidence that support the applicant's or  
16 respondent's position and shall be mailed to all persons who have received  
17 a copy of the complaint or filed a responsive pleading. If a response is not  
18 filed within the one hundred eighty day period by the person found by the  
19 court to have a superior right to receive the proceeds, the court shall enter  
20 an order in favor of any applicant or respondent entitled to the proceeds.  
21 On release of the proceeds, the county treasurer may assess and deduct from  
22 the proceeds a reasonable fee not to exceed one hundred dollars for the  
23 treasurer's costs associated with the civil action.

24           H. Within ninety days after completion of the sale, the trustee shall  
25 apply the proceeds of the sale pursuant to subsection A of this section or  
26 shall deposit the proceeds with the treasurer pursuant to subsection B of  
27 this section. IF THE TRUSTEE FAILS TO COMPLY WITH THIS SUBSECTION, THE  
28 TRUSTEE FORFEITS ANY ENTITLEMENT TO THE FEES AND COSTS PRESCRIBED IN  
29 SUBSECTION C OF THIS SECTION AND SHALL PAY INTEREST AT THE RATE PROVIDED FOR  
30 JUDGMENTS PURSUANT TO SECTION 44-1201 FROM THE DATE OF COMPLETION OF THE SALE  
31 UNTIL THE TRUSTEE COMPLIES WITH THIS SUBSECTION. ANY PERSON WITH A RECORDED  
32 OR OTHER LEGAL INTEREST IN THE PROPERTY AT THE TIME OF THE SALE MAY COMMENCE  
33 A CIVIL ACTION AGAINST THE TRUSTEE FOR THE TRUSTEE'S FAILURE TO COMPLY WITH  
34 THIS SUBSECTION. THE COURT MAY AWARD THE PREVAILING PARTY ITS REASONABLE  
35 ATTORNEY FEES INCURRED IN THAT CIVIL ACTION.

36           Sec. 10. Section 33-813, Arizona Revised Statutes, is amended to read:

37           33-813. Default in performance of contract secured;  
38                       reinstatement; cancellation of recorded notice of  
39                       sale

40           A. If, prior to the maturity date fixed by the contract or contracts,  
41 all or a portion of a principal sum or interest of the contract or contracts  
42 secured by a trust deed becomes due or is declared due by reason of a breach  
43 or default in the performance of the contract or contracts or of the trust  
44 deed, the trustor or the trustor's successor in interest, any person having  
45 a subordinate lien or encumbrance of record thereon or any beneficiary under

1 a subordinate trust deed may, before 5:00 p.m. MOUNTAIN STANDARD TIME on the  
2 last day other than a Saturday or legal holiday before the date of sale or  
3 the filing of an action to foreclose the trust deed, MAY reinstate by paying  
4 to the beneficiary, the trustee or the trustee's agent in a form acceptable  
5 to the beneficiary or the trustee the entire amount then due under the terms  
6 of the contract or contracts or trust deed, other than the portion of the  
7 principal as would not then be due had no default occurred, by curing all  
8 other defaults and by paying the amounts due under subsection B of this  
9 section.

10 B. The beneficiary shall notify the trustee in writing of the  
11 performance and the name of the person who performed the conditions. The  
12 proceedings shall be cancelled and the contract or contracts and trust deed  
13 shall be deemed reinstated and in force as if no breach or default had  
14 occurred upon performance of those of the following which may be applicable:

15 1. Payment of the entire amount then due.  
16 2. Payment of costs and expenses incurred in enforcing the terms of  
17 such contract or trust deed. THESE COSTS AND EXPENSES MAY INCLUDE THE  
18 FOLLOWING:

19 (a) REASONABLE COSTS FOR MAILING AND PHOTOCOPYING.  
20 (b) ACTUAL EXPENSES INCURRED FOR RECORDING, PUBLICATION, POSTING OF  
21 NOTICE OF SALE, AUCTIONEER'S FEE, POSTPONEMENT FEES AND TITLE COSTS.

22 (c) OTHER REASONABLE COSTS AND EXPENSES.  
23 3. Payment of the recording fee for a cancellation of notice of sale.  
24 4. Payment of the trustee's fees, in an amount not to exceed six  
25 hundred dollars or one-half of one per cent of the entire unpaid principal  
26 sum secured, whichever is greater.

27 5. Payment of expenses and reasonable attorney fees that are not  
28 otherwise provided for in this section and that are incurred in protecting  
29 and preserving the beneficiary's interest in the trust property.

30 C. ~~Upon ON request, the trustee shall provide to the trustor,~~ FROM THE  
31 TRUSTOR or any person entitled to notice pursuant to section 33-809,  
32 subsection B, at any time that the trust deed is subject to reinstatement,  
33 THE TRUSTEE SHALL PROVIDE a good faith estimate of the sums which THAT appear  
34 necessary to reinstate the trust deed.

35 D. ON WRITTEN REQUEST FROM THE TRUSTOR OR ANY PERSON ENTITLED TO  
36 NOTICE PURSUANT TO SECTION 33-809, SUBSECTION B THAT IS DELIVERED TO THE  
37 TRUSTEE AFTER THE RECORDING OF THE NOTICE OF TRUSTEE'S SALE, THE TRUSTEE  
38 SHALL INFORM THE PERSON OF THE EXACT AMOUNT NECESSARY TO REINSTATE THE TRUST  
39 DEED, separately specifying costs, fees, ~~accrued interest, unpaid principal~~  
40 ~~balance~~ and any other amounts which THAT are required to be paid as a  
41 condition to reinstatement of the trust deed. THE TRUSTEE SHALL PROVIDE THAT  
42 INFORMATION WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THE WRITTEN REQUEST.  
43 IF THE WRITTEN REQUEST IS RECEIVED BY THE TRUSTEE DURING THE FIVE BUSINESS  
44 DAYS BEFORE THE DAY OF THE SALE, THE TRUSTEE SHALL PROVIDE THE INFORMATION  
45 TO THE PERSON AS SOON AS PRACTICABLE. THIS SUBSECTION DOES NOT REQUIRE THE



1 EXTENSION OF THE PERIOD FOR REINSTATEMENT OF THE TRUST DEED PRESCRIBED IN  
2 SUBSECTION A OF THIS SECTION.

3 D. E. If the trust deed is reinstated as provided in subsection B of  
4 this section, the trustee shall have a cancellation of the notice of sale  
5 recorded in the same county recorder's office where the notice of sale was  
6 recorded. A trustee who, for thirty days after reinstatement, fails to have  
7 proper notice of the cancellation of the notice of sale recorded is liable  
8 to the person who performed the conditions resulting in reinstatement for all  
9 actual damages resulting from such failure.

10 E. F. If the trust deed is paid in full or if the sale is not held  
11 or is not properly postponed pursuant to this chapter, the trustee shall  
12 record a cancellation of the notice of sale. The cancellation of the notice  
13 of sale shall be recorded in the office of the county recorder in which the  
14 notice of sale was recorded.

15 F. G. An acknowledged recorded cancellation of a recorded notice of  
16 sale under a trust deed shall be sufficient if it is in substantially the  
17 following form:

18 Cancellation of Notice of Sale

19 The undersigned hereby cancels the notice of sale recorded

20 \_\_\_\_\_, \_\_\_\_\_, on trust property legally described as:

21 (legal description of trust property)

22 which notice of sale refers to a trust deed executed by

23 \_\_\_\_\_ as trustor, in which \_\_\_\_\_ is named as

24 beneficiary and \_\_\_\_\_ as trustee, and recorded

25 \_\_\_\_\_, \_\_\_\_\_, in docket or book \_\_\_\_\_, at page

26 \_\_\_\_\_, records of \_\_\_\_\_ county, Arizona.

27  
28 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

29 \_\_\_\_\_  
30 Signature of trustee

31 (Acknowledgement)

32 Sec. 11. Applicability

33 This act applies only to trustee's sales for which a notice of sale is  
34 recorded pursuant to section 33-807, subsection D, Arizona Revised Statutes,  
35 on or after the effective date of this act.

APPROVED BY THE GOVERNOR MAY 4, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2004.

Passed the House February 18, 2004,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Jake Dolan  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate April 13, 2004,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Blunth  
President of the Senate

Chaimin Bellinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

H.B. 2250

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 28, 2004,

by the following vote: 52 Ayes,

0 Nays, 8 Not Voting

Jake Flake  
Speaker of the House

Horman L. Fyfe  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of April, 2004,

at 12:58 o'clock P. M.

Wendy Ibarra  
Secretary to the Governor

Approved this 4 day of

May, 2004,

at 12<sup>05</sup> o'clock P. M.

J. R. Mc  
Governor of Arizona

H.B. 2250

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 2004,

at 1:38 o'clock P. M.

James L. Brown  
Secretary of State